Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

October Term, 1995

PERCY A. GREGORY, JR.

Petitioner,

v.

ANN E. NEYDON (P24670)
PATRICIA FABRIZIO (P46946),

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Percy A. Gregory, Jr.
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QUESTIONS PRESENTED

I. Did the District Court and the Court of Appeals err in not allowing me a Jury Trial according to Art. VI and Art. VII of the U.S. Constitution, the Supreme Law of the Land?

II. Did the Court of Appeals err in not allowing my rights, according to the U.S. Constitution, as related in my Brief, according to Law?

III. Did the Court of Appeals err because Administrative issue of "Liability" procedure was not followed according to Law?

IV. Did the Court of Appeals err on the "Transcript" from the District Court, based on "Notice" of Levy, not followed, according to Law?

V. Did the Court of Appeals err on my Forms W-4P, O.M.B. #1545-0415 because they were not followed according to Law?

VI. Did the Court of Appeals err because my rights, according to the "Privacy Act and Paperwork Reduction Act Notice #609 by the Privacy Act Law of 1974 (5 USC 552a, P.L.93-574), were not followed according to Law?

VII. Did the Court of Appeals err because my rights, according to "Title 26, U.S.C. Statutes", as related in my Brief, were violated according to Law?

VIII. Did the Court of Appeals err because my rights, according to the Court Cases, as related in my Brief, were violated according to Law?

PUBLISHER'S NOTE

ORIGINAL PAGINAT

PARTIES TO PROCEEDINGS

The parties to the proceedings are the Petitioner and the Respondents.

The Petitioner represented himself Pro-Se.

The Respondent, Electrical Workers Local 58 Pension Fund, is represented by Ann E. Neydon (P24670) and Patricia Fabrizio (P46946), 1000 Farmer, Detroit, Michigan 48226.

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OPINIONS BELOW

The Order of the Sixth Circuit sought to be reviewed is Percy A. Gregory, Jr. v. Ann E. Neydon (P24670) and Patricia Fabrizio (P46946), representing Electrical Workers Local 58 Pension Fund, No. 94-1858 (6th Cir. Nov. 14, 1994). The District Court Opinion of the same name is reported at 93-74453 (D. Mi. 1994). This Order and Opinion are reprinted in the accompanying Appendix.

JURISDICTION

The Order of the Court of Appeals in this case was filed on April 20, 1995. Petitioners' timely petition for rehearing was denied on June 14, 1995. The Jurisdiction of this Court is invoked under 28 USC Sect. 1254(1).

CONSTITUTIONAL PROVISIONS, STATUES AND OTHER AUTHORITIES

This case concerns the U.S. Constitution, 26 USC Statutes and Other Authorities which are reprinted in the Table of Authorities.

STATEMENT OF THE CASE

A. Intrtoduction

Percy A. Gregory, Jr., the Petitioner in this action is a Sovereign Citizen of the United States and Legally adheres to the Supreme Law of the Land.

Petitioner filed application for "Disability" Pension Benefits on January 13, 1993.

Petitioner filed Forms W-4P, O.M.B. # 1545-0415, Withholding Certificate for Pension and Annuity payments, with the election box marked, "I elect not to have income tax withheld frrom my Pension or Annuity". (Do not complete lines 2 or 3). These W-4P Forms were signed by me pursuant to Title 26, USC Sect's. 3401(e) and 3402(f).

Petitioner then submitted to the Pension and Annuity Funds an "Affidavit Letter", dated July 28, 1993, pursuant to Title 26, USC Sect. 3402(n); which designates specifically: "Employees Incurring no Income Tax Liability".

The Pension Fund's Trustees, on July 21, 1993, approved Petitioner's application for "Disability Retirement" benefits, retroactive to February 1, 1993.

The "Notice" of Levy, stipulated to throughout the Respondent's Brief and manipulated to by "Levy", throughout Respondent's Brief, now comes in Conflict.

Petitioner did refuse to sign Part 3 of the "Notice" of Levy Form, "Under Penalties of Perjury" because I cannot find a Law, # of Law, or Sect. of Law that can force me to sign a Document, "Under Penalties of Perjury", thereby, giving up my Jurisdictional rights in a Court of Law.

As we will see in the Argument that "Liability" for a tax has to be prooven beyond a reasonable doubt prior to "Levying" anybody.

ARGUMENT

I. THE LOWER COURTS DECISIONS ARE IN CONFLICT WITH TITLE 26, U.S.C. CODE LAW.

GREGORY'S FORM W-4P WITHHOLDING CERTIFICATE FOR PENSION AND ANNUITY PAYMENTS, O.M.B.#1545-0415, PURSUANT TO TITLE 26, U.S.C. SECTIONS 3401(e) and 3402(f)(2)(a), ARE IN CONFLICT ACCORDING TO LAW.
It is clearly written on the W-4P Withholding Certificate Box, that, I have the "Election not to have Income Tax withheld from Pension and Annuity."

GREGORY SUBMITTED AN "AFFIDAVIT LETTER", DATED 7-28-93, PURSUANT TO TITLE 26, U.S.C. SECTION 3402(n), OF WHICH IS DEFINITELY IN CONFLICT.
It was related at District Court Level that: "Section 3402(n) governs the relationship between an Employer and IRS". The Conflict here is: "Section 3402(n), if read properly, governs the relationship between an Employer and Employee".

GREGORY'S RIGHTS PURSUANT TO TITLE 26, U.S. C. SECTIONS 3405(a)(2), 3405(b)(2a), 3405 (c), 3405(c)(1)(b) ARE IN CONFLICT.
As we can clearly see, these sections of Title 26, U.S.C. allow the Legal Right to "Elect to have no withholding from Pension and Annuity Funds". Any variation would constitute a DIRECT TAX which is illegal according to Article I, Sect. 9, Cl.4 of our United States Constitution, which States: "No Capitation or other DIRECT TAX shall be laid unless in proportion to the Census or Enumeration hereinbefore directed to be taken". Also, we, have a Conflict with "VOLUNTARY" withholding provisions v. "MANDATORY" withholding.
The United States Supreme Court Case stated: "Our system of taxation is based on "VOLUNTARY" ASSESSMENT and payment, not on "DISTRAINT". See:
Flora v. U.S., 362, 145, Pg. 176.
Privacy Act and Paperwork Reduction Act Notice, #609, by the Privacy Act Law of 1974 (5USC, 552a, P.L. 93-574)".
Art. I, Sect. 2, Cl. 3, (Apportionment Procedures)";
Art. I, Sect. 8, Cl. 1, (Uniformity Procedures)";

Art. XIII, (Involuntary Servitude and Slavery Procedures), of our United States Constitution.

GREGORY'S RIGHTS PURSUANT TO TITLE 26, USC SECTION 6331, ARE IN CONFLICT.
As we can clearly see in Section 6331, that "Liability" for a tax has to be prooven, beyond a reasonable doubt, prior to taxing anyone.
Also, it was related in the "TRANSCRIPT" at the District Court Hearing on Wednesday June 29, 1994, 2PM, that: "Title 26, USC 6331, clearly specifies", "Levy" and "Distraint" and "Liability". The only part of this Section 6331 that pertains to a "Notice" of Levy relates to: "Any Officer, Employee or Elected Official of the United States, the District of Columbia or any Agency or Instrumentality of the United States or the District of Columbia". It does not relate to a private individual. The Pension Fund adhered to a "Notice" of Levy Form and not a "Levy" and Distraint Form, as related in Section 6331 and the following Cases:
Freeman v. Mayer, Cite as 152, F.Supp. 383, 385, 387.

United States v. O'Dell, 6th. Cir. Court of Appeals March 10, 1947, Pg.304, 307, 308.

GREGORY'S RIGHTS PURSUANT TO NOTICE OF LEVY FORM 668-W, WHICH DID NOT CONTAIN AN O.M.B. # (OFFICE OF MANAGEMENT AND BUDGET) AND PART 3 OF 668-W FORM, BASED ON "UNDER PENALTIES OF PERJURY", ARE IN CONFLICT.
As you can clearly see, this Form 668-W, "Notice" of Levy does not legally contain an O.M.B. #. The Paperwork Reduction Act of 1980, P.L.96-511, 94 Stat. 2813, 44 USC 3512 of the Paperwork Reductrion Act Law is further proof of O.M.B. #'s on Legal Forms.
Also, on this Form 668-W, Part 3, I cannot find a Law, Number of Law or Section of Law that forces an individual to sign a Document, "Under Penalties of Perjury", thereby, giving up Jurisdictional Rights in a Court of Law.
I also, refuse to waive my 5th. Amendment Rights according to the U.S. Constitution. See:
Miranda v. Arizona, 384, U.S., 436, 86 S. Ct. 1602 (1966), Pgs. 442, 444, 445, 459, 460, 461, 462, 469, 474, 475, 479, 480, 481, 485, 486, 491, 492.

Garner v. United States, 424 U.S. 648 (1975) Pg. 652, 653, 656.

GREGORY'S RIGHTS PURSUANT TO TITLE 26 USC SECTION 6332(e) ARE IN CONFLICT.
As we can clearly see this section specifically relates: "Effect of honoring "Levy". It does not even mention "Notice" of Levy in the Statute. The Pension Fund may be Immune from Suit based on compliance with a "Levy", but the Pension Fund is not Immune from Suit based on compliance with a "Notice" of Levy, stipulated to throughout the Judgment. The "Notice" of Levy which was stipulated to in Defendant's Brief at the Court of Appeals Level was processed in violation of this Statute. In the Defendant's Brief they Stipulate and then Manipulate "Notice" of Levy v. Levy. These related Statutes should be read verbatim and followed according to Law. "In the interpretation of Statutes Levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out.

In case of doubt they are constured most strongly against the government and in favor of the citizen". See:

Gould v. Gould, 245 U.S. 151, 153 (1917 38 S.Ct. 53; 62 L.Ed. 211).

United States v. Merriam, 263 U.S. P.179 188 (1923).

Busse v. C.I.R. 479 F.2d 1147, P.1151, (1973).

United States v. Missouri P.R.Co., 278 US 269, 277, 49 S.Ct. 133, 136, 73, L.Ed. 322.

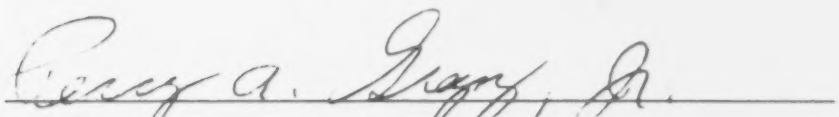
Spreckles Sugar Refining Company v. McClain, 192 U.S. P.416, (1904).

CONCLUSION

The important issues presented here which the Sixth Circuit decided in Conflict is whether Title 26, U.S.C. Code Law, Constitutionsl Provisions and Other Authorities have been violated according to Law.

Wherefore Petitioner requests that this Court grant his Petition for a Writ of Certiorari to review and reverse the decision of the Sixth Circuit.

Respectfully submitted,



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APPENDIX

APPENDIX A-1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MICHIGAN

CIVIL ACTION NO. 93-74453

PERCY A. GREGORY, JR.

Plaintiff

v.

WILLIAM DELLAPA FOR ELECTRICAL WORKERS PENSION FUND OF LOCAL UNION 58, I.B.E.W. DETROIT, MICHIGAN

Defendants

MEMORANDUM AND ORDER

COHN, JUDGE

I.

This is a tax case. Plaintiff Percy A. Gregory, Jr. (Gregory) seeks to recover from defendant, Electrical Workers Pension Fund of Local Union 58, I.B.E.W., Detroit, Michigan (Pension Fund),[1] monies he contends the Pension Fund and Electrical Worker's Annuity Fund (collectively "the Funds") unlawfully withheld and paid to Internal Revenue Service (IRS).

Now before the Court are cross motions for summary judgment. For the reasons which follow, Gregory's motion will be denied, the Pension Fund's motion will be granted, and the Annuity Fund's motion will be granted. The case will be dismissed.

[1] The caption on Gregory's complaint names the defendant as "Mr. William Dellapa for Electrical Workers Pension Fund of Local Union 58, I.B.E.W., Detroit, Michigan 48226." William Dellapa is the administrator for the IBEW, Local Union No. 58 Annuity Fund (Annuity Fund) and the Electrical Workers Pension Fund of Local Union No. 58. Gregory's complaint concerns both the Annuity Fund and the Pension Fund. The relationship between the two Funds is unclear, therefore the Court treats them as two separate defendants.

II.

Gregory is a participant in the Pension Fund and the Annuity Fund. On January 13, 1993 he filed an application for Pension Fund Benefits. On March 3, 1993 Gregory filed an IRS Withholding Certificate, Form W4-P, indicating that he "elected[ed] not to have income tax withheld from my pension or annuity". The IRS served a Notice of Levy on the Pension Fund on April 6, 1993 attaching "the taxpayer's pending claim for total and permanent disability retirement benefits."

On July 21, 1993 Gregory's application for disability retirement benefits was approved by the Pension Fund retroactively effective February 1, 1993. His lump sum retroactive benefit payment totalled $8,015.84 for the period February through August 1993. The Pension Fund sent Gregory Parts 2, 3, 4, and 5 of the IRS Notice of Levy and asked him to complete Parts 3 and 4 and return them to the Pension Fund. The Pension Fund instructed Gregory that is he did not complete Parts 3 and $, the exempt amount to which he was entitled would be calculated as if he were married and filing separately and having only one exemption. Gregory did not complete Part 3 "Statement of Exemptions and Filing Status" of the Notice of Levy. The Pension Fund deducted $4,836.65 under the formula provided in the Notice of Levy and paid it to the IRS pursuant to the Notice of Levy.[2] The balance, $3,179.19 was paid to Gregory on August 2, 1993.

On July 28, 1993 Gregory sent a letter to Ann Neyden, counsel for the Pension Fund demanding that the Fund not deviate from his specific instructions and enclosing a

1993 Form W-4P Withholding Certificate for Pension and Annuity Payments in which he checked off that he elected not to have taxes withheld from his benefit payment, and an affidavit.

to establish his not subject to tax status with respect to Federal Income Taxes pursuant to 26 U.S.C. 3402(n) certifying that:

1. I incurred no "liability" for income tax imposed under Title A for the preceding taxable year;

2. I anticipate I will incur no "liability" for income tax imposed under subtitle A for the current taxable year;

3. I had a right to a full refund of any and all amounts withheld for both years.

On August 6, 1993 Gregory sent Dellapa a letter enclosing another 1993 Form W-4P and another affidavit based on 26 U.S.C. 3402 (n).[3]

On August 9, 1993 the Annuity Fund received Gregory's application for annuity benefits in which he elected to have his benefits paid a a lump sum cash payment. The Annuity Fund provided Gregory with a notice "Important Tax Notice Regarding IBEW Local Union No. 58 Annuity Fund Plan Payments", which explained his option to have his lump sum cash payment directly

rolled over into an Individual Retirement Act (IRA), Individual Retirement Annuity or another qualified employee plan, or to have his benefit paid directly to him which would subject him to a twenty percent federal income tax withholding. Gregory did not complete the Direct Rollover Election Form so, Pursuant 26 U.S.C. 3405(c), the Annuity Fund paid Gregory $4,816.17 representing eighty percent of his total benefit of $6,020.21 and paid twenty percent $1,204.04 to the IRS.

[2] The Instructions for Figuring the Amount Exempt from the Levy, which appear on the reverse side of the Notice of Levy, Form 668-W, provide in relevent part:

If you do not receive the completed parts 3 and 4 then the exempt amount is what would be exempt if the taxpayer had returned the form indicating married, filing separate and only the taxpayer is claimed as a personal exemption.....

[3] 26 U.S.C. 3402)n) provides:

Nothwithstanding any other provision of this section, an employer shall not be

required to deduct and withhold tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate.... furnished to the employer by the employee certifying that the employee --

(1) incurred no liability for income tax imposed under subtitle A for his previous taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

III.

The Pension Fund moves for summary judgment on several grounds, (1) that Gregory's claim is precluded by a prior adjudication against him on the same issues and claim, (2) Gregory's claim regarding liability for income tax must be brought against the IRS, not against the Pension Fund, (3) that the levy procedure under 26 U.S.C. 6331 is legally sufficient, and (4) that the Pension Fund is immune from suit arising from compliance with and IRS levy under 26 U.S.C. 6332(e). The Annuity Fund moves for summary judgment on the ground that the withholding provision of 26 U.S.C. 3405(c) applies without regard to 26 U.S.C. 3402(n) and that the Annuity Fund is immune from any claim arising out

of compliance with the withholding provisions of the internal revenue code.

Gregory moves for summary judgment against the Pension Fund on the grounds, essentially, that the notice of levy procedure is illegal because the IRS did not send Gregory a notice of assessment and demand, therefore the Pension Fund's withholding of taxes pursuant to the Notice of Levy was illegal. Additionally, Gregory moves for summary judgment against both the Pension Fund and Annuity Fund asserting that they failed to follow the W4-P form on which he elected not to have taxes withheld from his pension and annuity benefits.

A.

1.

In the prior adjudication, Gregory filed suit in 1990 against the Electrical Workers Vacation Fund and the Electrical Workers Supplemental Unemployment Benefit Fund demanding payment of amounts the Funds paid to the IRS pursuant to a Notice of Levy. Percy A. Gregory, Jr. v Ann E. Neydon, representing Electrical Workers Fringe Benefit Funds, No. 90-CV-70572-DT,(E.D.

Mich. December 11, 1990). Gregory claimed the notice of levy procedure was unconstitutional and resulted in deprivation of property and that the defendanta were not immune from liability even if there was compliance with an IRS Notice of Levy. The Court found the notice of levy procedure constitutional and held that the Funds were immune from liability.

The Pension Fund contends that the issues raised regarding the constitutionality of the levy procedure as well as the issue of immunity are the same as those raised here by Gregory and therefore, he is precluded by res judicata or collateral estoppel from relitigating them here.

2.

Under res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. Allen v. McCurry, 449 U.S.90, 94 (1980). Under collateral estoppel, once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue in a different cause of action between the same parties.

Kremer v. Chemical Construction Corp., 456 U.S.461, 466-467 n.6 (1982). In this case, Gregory is not asserting that the levy procedure is unconstitutional, rather he contends that the IRS failed to make an assessment of the amount of taxes he allegedly owes, that he never received a notice of assessment and therefore the notice of levy was merely a request for voluntary payment of taxes. Regardless of the merit of this argument, Gregory is not barred by collateral estoppel or res judicata from asserting it as the argument in the earlier case concerned the constitutionality of the levy procedure, specifically whether the levy procedure constituted a taking under the Fifth Amendment.

With regard to the issue of immunity, the district court in the earlier case was faced with the same issue as presented here, whether defendants are immune from liability arising from compliance with Notice of Levy. However, the Pension Fund is a different but related entity to the defendant in the earlier case, the Electrical Worker's Fringe Benefits Fund (Fringe Benefit's Fund). Under Michigan law, mutuality is an element of collateral estoppel.

Lichon v American Insurance Co., 435 Mich. 408, 428 (1990). Since the Pension Fund and the Annuity Fund are different than the defendant in the earlier action, the Fringe Benefit's Fund, Gregory is not estopped from relitigating the immunity issue.

B.

The Internal Revenue Code clearly provides that persons complying with an IRS Notice of Levy are not subject to liability for complying with the levy:

> Effect of honoring levy. Any person in possession of (or obligated wiht respect to) property or rights to property subject to levy upon which a levy has been made who upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

26 U.S.C. §6332(e). Here the Pension Fund was obligated to pay Gregory certain pension benefits, receivced a notice and demand in the form of a Notice of Levy, and complied with its requirements. Accordingly, it is immue from suit under 26 U.S.C. §6332(e).

C.

Gregory next contends that Auunity Fund illegally withheld funds from his benefits in violation of his specific instructions in his form W-4P in which he elected not to have taxes withheld from his annuity benefits. However, form W-4P is not relevant here. The pertinent provision of 26 U.S.C. §3405 provides:

(a)(1) The payor of any periodic payment (as defined in subsection (e)(2)[4] shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(a)(2) An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual.

(c)(1) in the case of any designated distribution which is an eligible rollover distribution --

(A) subsections (a)and (b) shall not apply, and

(B) The payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

There is no dispute that the Annuity Fund's lump sum cash payment to Gregory was as eligible rollover distribution. Although Gregory claims that the Annuity Fund was bound by his election on the form W-4P, 26 U.S.C. §3405(C)(1)(A) clearly provides that he cannot make such an election. The Annuity Fund complied with the requirements of the statute by withholding twenty percent of his distribution.

Further, the Annuity Fund is immune from liability, pursuant to 26 U.S.C. §3405 (f) withholding from pensions and annuities are to be treated a wage withholdings under §3402 for other purposes. Under §3403, employers are "liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment." Since the Annuity Fund withheld taxes in compliance with §3405 it is immune from liability for so doing.

[4] 26 U.S.C. §3405(e)(2) defines a periodic payment as "a designated distribution which is an annuity or similar periodic payment."

D.

Finally, in as much as Gregory's claim rests on 26 U.S.C. §3402(n), his claim is without merit. Section 3402(n) governs the relationship between an employer and the Internal Revenue Service. Pascoe v. IRS, 580 F.Supp. 649, 654 (E.D. Mich.1984), aff'd 755 F.2d 932 (6th Cir. 1985). It does not provide an employee with a cause of action against his employer, no does it provide a participant with an action against his pension fund. Id. Further, pursuant to 26 U.S.C. §7422(F)(1), a suit or proceeding for recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected may be brought only against the United States. Accordingly, Gregory's claim concerning the legality of the levy process or compliance with the levy process must be brought against the IRS.

IV.

For the reasons stated above Gregory's motion for summary judgment is DENIED. The Pension Fund's motion for summary judgment

is GRANTED. The Annuity Fund's motion for summary judgment is GRANTED. The case is DISMISSED.

SO ORDERED.

AVERN COHN

UNITED STATES DISTRICT JUDGE

DATED: JUNE 30, 1994

Detroit, Michigan

APPENDIX B-1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Appeal No. 94-1858
(D.C. No. 93-74453, Dist. of Mich.)

PERCY A. GREGORY

Plaintiff-Appellant,

v.

ELECTRICAL WORKERS LOCAL 58 PENSION TRUST FUND; LOCAL 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

Defendants-Appellees.

ORDER

BEFORE: MERRITT, Chief Judge; KEITH AND WELLFORD, Circuit Judges.

Percy A. Gregory appeals a district court order dismissing his claims against the defendants, alleging that they improperly withheld taxes from certain funds owed Gregory.

The case has been referred to a panel of the court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 1993, Gregory sued the Electrical Workers Pension Fund of Local Union No. 58 and the Union, alleging that the defendants improperly withheld and paid to the Internal Revenue Service (IRS) monies owed him from his pension fund and annuity fund. The district court concluded that Gregory's claims were without merit and granted summary judgment for the defendants. Gregory has filed a timely appeal.

Upon review we conclude that the district court properly granted summary judgment for the defendants as there is no genuine issue as to any material fact and the defendants are entitled to judgment as a matter of law. Moore v. Philip Morris Cos., 8 F.3d 335, 339 (6th Cir. 1993). The district court properly concluded that the defendants were immune from suit for their actions in this case.

See United States v. National Bank of Commerce, 472 U.S. 713, 720-21 (1985); State Bank of Fraser v. United States, 861 F.2d 954, 958 (6th Cir. 1988); Bright v. Bechtel Petroleum, In., F.2d 766, 770 (9th Cir. 1986; Edgar v. Inland Steel Co., 744 F.2d 1276, 1278 (7th Cir. 1984)(per curiam). Further, as Gregory is challenging federal income tax withholding, his exclusive remedy for a tax refund is an action against the United States. See 26 U.S.C. § 7422; Burda v. M. Ecker Co., 954 F.2d 434, 439 (7th Cir. 1992).

Accordingly, we affirm the judgment for the reasons set forth in the district court's order filed on June 30, 1994. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____
Clerk

Entered for the Court:
Leonard Green,
Clerk,
Filed April 20, 1995.

APPENDIX C-1

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Appeal No. 94-1858

PERCY A. GREGORY,
Plaintiff-Appellant,

v.

ELECTRICAL WORKERS LOCAL 58
PENSION TRUST FUND, ET AL.,
Defendants-Appellees

ORDER
Entered June 14, 1995

Before: MERRITT, CHIEF JUDGE; KEITH AND WELLFORD, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all active judges of this court having requested a vote on the suggestion for rehearing en banc, the

petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

_____

Leonard Green, Clerk